

- 1 -

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	:	Before the Examiner:
David Carroll Challener	:	Nguyen, Nga B.
	:	
Serial No.: 09/851,956	:	Group Art Unit: 3692
	:	
Filing Date: May 9, 2001	:	
	:	
Title: SYSTEM AND METHOD	:	Lenovo (United States) Inc.
FOR INSTALLING A REMOTE	:	Building 675, Mail C-137
CREDIT CARD AUTHORIZATION:	:	4401 Silicon Drive
ON A SYSTEM WITH A TCPA	:	Durham, NC 27709
COMPLIANT CHIPSET	:	

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the Final Office Action having a mailing date of October 19, 2006, Applicant respectfully requests the formal review of the legal and factual basis of the rejections in this case prior to the filing of an Appeal Brief. A Notice of Appeal is filed concurrently herewith.

REMARKS/ARGUMENTS

Claims 1-27 are pending in the Application. Claims 1-27 remain rejected under 35 U.S.C. §103(a) as being unpatentable over Trusted Computing Performance Alliance (TCPA), TCPA Design Philosophies and Concepts, Version 1.0 (hereinafter "TCPA"). Applicant respectfully traverses these rejections for at least the reasons stated below.

I. Claims 1-27 are improperly rejected under 35 U.S.C. §103(a) as being unpatentable over TCPA.

A. Claims 1 and 16 are patentable over TCPA.

Applicant respectfully asserts that TCPA does not teach or suggest "receiving from a customer over a network an application for a credit card authorization, a non-migratable key, a first certificate by a Trusted Platform Module (TPM) identity associated with a computer system used by the customer, and a second certificate acquired by the computer system from a Certification Authority (CA)" as recited in claim 1 and similarly in claim 16. The Examiner cites Sections 2.4.1.1; 2.4.1.2 and 2.5.1 of TCPA as teaching the above-cited claim limitations. Office Action (10/19/2006), page 3. Applicant respectfully traverses.

TCPA instead teaches a computing platform involving a subsystem requires the support of a PKI, although a subsystem does not itself explicitly use that PKI. Page 7, Section 2.4.1.1. TCPA additionally teaches that generally, a CA enables determination of the identity by providing a certificate that binds the identity label of an entity to the cryptographic identity (public key) of that entity. *Id.* Furthermore, TCPA teaches that any certificate that grants an identity to a subsystem must include the statement 'TCPA subsystem identity,' and the signature on the certificate must encompass the statement. Page 7, Section 2.4.1.2. TCPA further teaches that to create a subsystem identity that is recognized by the PKI, the TPM must contain a private endorsement key. Page 9, Section 2.5.1. TCPA further teaches that the owner must make available the endorsement credential, the platform credential, the conformance credential, and the public key of a Privacy CA. *Id.*

Hence, TCPA teaches that a certificate authority provides a certificate that binds the identity label of an entity to the cryptographic identity (public key) of that entity. Further, TCPA teaches that any certificate that grants an identity to a subsystem must include the statement 'TCPA subsystem identity.'

There is no language in the cited passages that teaches receiving from a customer over a network an application for a credit card authorization. Neither is there any language in the cited passages that teaches receiving from a customer over a network an application for a credit card authorization, a non-migratable key. Neither is there any language in the cited passages that teaches receiving from a customer over a network an application for a credit card authorization, a non-migratable key, a first certificate by a TPM identify associated with a computer system used by the customer. Neither is there any language in the cited passages that teaches a second certificate acquired by the computer system from a certification authority.

Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 1 and 16, since the Examiner is relying upon incorrect, factual predicates in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

Applicant further asserts that TCPA does not teach or suggest "creating a public/private key pair and a third certificate in response to the receiving step" as recited in claim 1 and similarly in claim 16. The Examiner cites Section 2.4.1.7 of TCPA as teaching the above-cited claim limitation. Office Action (10/19/2006), page 4. Applicant respectfully traverses.

TCPA instead teaches that the 'Trusted Platform Module Entity' (TPME) is the entity that vouches that a TPM is actually a TPM. Page 8, Section 2.4.1.7. TCPA further teaches that the TPME, and only the TPME, provides the root of the trust in the TPM. *Id.*

There is no language in the cited passage that teaches creating a public/private key pair. Neither is there any language in the cited passage that teaches creating a public/private key pair and a third certificate in response to the receiving step.

Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 1 and 16, since the Examiner is relying upon incorrect, factual predicates in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

Applicant further asserts that TCPA does not teach or suggest "sending the public/private key pair and the third certificate to the customer over the network" as recited in claim 1 and similarly in claim 16. The Examiner cites page 10 of TCPA as teaching the above-cited claim limitation. Office Action (10/19/2006), page 4. Applicant respectfully traverses and asserts that TCPA instead teaches the three main phases in obtaining evidence of TPM identity. Page 10. There is no language in the cited passage that teaches sending a public/private key pair. Neither is there any language in the cited passage that teaches sending a public/private key pair and a third certificate to a customer. Neither is there any language in the cited passage that teaches sending a public/private key pair and a third certificate to a customer over the network. Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 1 and 16, since the Examiner is relying upon incorrect, factual predicates in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

B. Remaining Claims are Patentable over TCPA.

Applicant would like to point out that in the non-final Office Action (2/16/2006), the Examiner simply cited the entire reference (pages 1-30 of TCPA) as teaching each and every claim limitation in claims 1-27. Applicant respectfully requested the Examiner to more particularly point out where these limitations were allegedly taught in TCPA. The Examiner, in the final Office Action, has now cited to particular passages in TCPA. Unfortunately, due to the page limitation of the pre-appeal conference request, Applicant cannot address each of the limitations in claims 2-15 and 17-27. However, upon review of the above arguments and the Examiner's final Office Action, it should become apparent to the Examiner's SPE Hyung S. Sough and the other conferee in the pre-appeal conference that claims 2-15 and 17-27 are likewise allowable.

II. CONCLUSION:

Applicant again submits that the rejections of claims 1-27 under 35 U.S.C. §103(a) are improper. Applicant respectfully requests that this case be reopened and that the rejections be withdrawn and a timely Notice of Allowance be issued.

Respectfully submitted,

WINSTEAD SECHREST & MINICK P.C.

Attorneys for Applicant

By: _____

Robert A. Voigt, Jr.
Reg. No. 47,159

P.O. Box 50784
Dallas, TX 75201
(512) 370-2832

Austin_1 329602v.1